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UNITED STATES OF AMERICA

v.

SALIM AHMED HAMDAN

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) DEFENSE REQUEST FOR  
) RELIEF IN THE FORM OF  
) A DOCKETING DATE TO  
) FOR ARGUMENT OF MOTIONS  
)  
)  
) September 10, 2004

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1. Relief Requested. The Defense requests that the Military Commission set 1 November 2004 as date for evidentiary hearings and oral argument as necessary in conjunction with the Defenses filed motions to dismiss and those motions for which notice was provided to the Presiding Officer on 19 August 2004 and the Military Commission on 24 August 2004.

2. Justification: During the initial Commission hearing Defense provided two motions to dismiss (failure to provide combatant status hearing and unlawful command influence) and notice of the intent to file motions to dismiss for Violation of Article 103 of the Third Geneva Convention and United States Government Regulations for failure to state an offense within the subject-matter jurisdiction of a Military Commission and contrary to the recognized Laws of War; Military Commissions improperly constituted in violation of the Equal Protection Clause; Military Commissions improperly constituted in violation of Separation of Powers; Military Commissions improperly constituted in violation of 42 U.S.C. § 1981; For lack of personal jurisdiction over Mr. Hamdan; Motion to dismiss for denial of a speedy trial in violation of Article 10 of the UCMJ; and for Violation of Common Article 3 of the Geneva Conventions.

The Defense notes that these notices of motion were filed within the guidelines prescribed by the Presiding Officer and that the Presiding Officer scheduled dates for the filing of the motion, answer and reply, but did not set a date for the hearing of facts in dispute or argument. The Defense requests that motions commence on 1 November 2004. As previously noted in the Defense request for amendment for trial date, Mr. Hamdan has accepted Professor Neal Katyal's offer to serve as civilian defense counsel and defense anticipates Professor Katyal's participation during motions practice. In order to ensure Professor Katyal's availability, the Defense requests dates certain for the commencement of motion practice. The Defense anticipates that factual hearings and argument regarding the above motions will require two days.

This request is in keeping with Mr. Hamdan's earlier request for speedy trial expedited federal proceedings, and the Secretary of Defense's directive and Military Commission Order No. 1, that Presiding Officer shall ensure expeditious conduct of the trial. (MCO No. 1, para. 4.A.(5)(c)). It also accords with the representations made by the United States Department of Justice in the civilian case of *Swift v. Rumsfeld*, where the Government has stated that "[b]oth the government and Hamdan have proposed that his commission trial begin in December." Consolidated Return in *Swift v. Rumsfeld*, at 6. Because of the *Al Qosi* trial, it may therefore be necessary to begin Mr. Hamdan's trial in the month of November. In order to accommodate a November trial, the Defense seeks expedited argument of motions.

In the event that the Presiding Officer is excused from further participation in the subject commission this request is made in the alternative to the Appointing Authority pursuant to the authority delegated to him by the Secretary of Defense of the Secretary's authority to provide guidance regarding the time and place of Military Commissions. (Sect. 4, para.(c)(1) of Presidential Military Order of 13 November 2003)

Submission of this request is not a waiver of the Defenses earlier request for abatement pending the resolution of the legality in the Federal Court. Instead, it is a docketing request made to ensure that Mr. Hamdan's case is handled in an expeditious manner by the Military Commissions in the event that abatement is not granted.

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